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Supreme Court

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United States

OCTOBER TERM, 1984

NO.

GARY FRANCIS WILSON

Petitioner,

vs.

RICHARD L. DUGGER, Superintendent
Florida State Prison, et al.

Respondent.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

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QUESTION PRESENTED

Did the United States Court of Appeal, Eleventh Circuit, error in affirming the District Court for the Middle District of Florida, Orlando Division, order denying

the Petitioner's Habeas Corpus Petition filed pursuant to Title 28 U.S.C. Section 2254, wherein Petitioner maintained that his conviction in the state court proceedings was obtained in violation of his privilege against self-incrimination in view of the fact that the Petitioner's statements were involuntarily made and therefore improperly admitted into evidence at his state criminal trial?

TABLE OF CONTENTS

Page No.

TABLE OF CASES, STATUTES and AUTHORITIES..... iv.

OPINION BELOW..... 1.

JURISDICTION OF THE SUPREME COURT. 1.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED..... 2.

STATEMENT OF THE CASE..... 3.

SUMMARY OF ARGUMENT..... 22.

QUESTION PRESENTED..... 27.

ARGUMENT..... 27.

CONCLUSION..... 48.

CERTIFICATE OF SERVICE..... 50.

APPENDIX

TABLE OF CASES, STATUTES AND AUTHORITIES

Page No.

CASES

Ashcraft v. Tennessee, 322 U.S. 143,147-48,64 S.Ct. 921, 88 L.Ed.2d 1192 (1944).....31.

Beckwith v. U.S., 425 U.S. 341, 348, 96 S.Ct. 1612, 1617, 48 L.Ed.2d 1 (1976).....30.

Blackburn v. Alabama, 361 U.S. 199, 4 L.Ed.2d 242, 80 S.Ct. 274 (1960).....23. & 41.

Culombe v. Connecticut, 367 U.S. 568, 6 L.Ed.2d 1037, 81 S.Ct. 1860 (1961).....24.

Davis v. North Carolina, 384 U.S. 737, 741, 42 86 S.Ct. 1761, 1764, 16 L.Ed.2d 895 (1966).....30.

Fikes v. Alabama, 353 U.S. 191, L.Ed.2d 246, 77 S.Ct. 281.....45.

Haynes v. Washington, 373 U.S. 503, 515-16, 83 S.Ct. 1336, 1344, 10 L.Ed.2d 513 (1963).....31.

Jurek v. Estelle, 623 Fed.2d 929 (5th Cir. 1980).....25. & 29.

Lisenba v. California, 314 U.S. 219, 237, 62 S.Ct. 280, 290, 86 L.Ed. 166 (1941).....31.

Page No.

Marshall v. Lonberger, ___U.S.___, 103 S.Ct. 843, 850, 74 L.Ed.2d 646, 657, (1983).....25. & 35.

Moore v. Ballone, 448 Fed.2d 1789 (Dist.Ct.E.Dist.Va.).....25.

Moore v. Ballone,488 Fed.Supp. 798 (Dist.Ct.,E.Dist.Va. 1981).....29.

Spano v. New York, 360 U.S. 315, 316, 79 S.Ct. 1202, 1203, 3 L. Ed.2d 1265 (1959).....31.

Spano v. New York, 360 U.S. 315, 3 D.Ed.2d 1265, 1272, 79 S.Ct. 1202.....45.

Sumber v. Mata, 455, U.S. 591, 102 S.Ct. 1303, 71 L.Ed.2d 480 (1982).....39.

U.S. v. Wertz, 625 Fed.2d 1128 (4th Cir. 1980).....25. & 28.

Wilson v. State, 388 So.2d 1134 (5th DCA 1980).....21.

Wilson v. Strickland, 735 Fed.2d 1376 (11th Cir. 1984).....22.& 23.

STATUTES

Title 28 U.S.C.A. Section 2254(d) (8) State custody; remedies in Federal Court.....APP.9-d-f

Florida Statute 394.467 Involuntary hospitalization.....APP.25a-g

Page No.

CONSTITUTION

FIFTH AMENDMENT.....APP.9-a

FOURTEENTH AMENDMENT APP.9-b

FLORIDA CONSTITUTION, Article I,
SECTION 9.....APP.9-c

OPINION BELOW

The opinion of the United States Court of Appeal for the Eleventh Circuit, which the Petitioner prays for this Court to review is reported at 735 Fed.2d 1376 (11th Cir. 1984) Case No. 83-3453 and is reproduced in Appendix to the Petition.(App.1-5-b)

JURISDICTION OF THE SUPREME COURT

The Judgment of the United States Court of Appeals for the Eleventh Circuit, was rendered on May 30, 1984. (App. 1-5-b)A Petition for Rehearing was filed and denied by the Eleventh United States Court of Appeals on July 25, 1984 and is reproduced in the Appendix. (App. 6).

Petitioner's convictions for two counts of First Degree Murder were affirmed by the Fifth District Court of Appeal of Florida, Case No. 79-934, 388 So.2d 1134 (5th DCA 1980) No further appeal was permitted do to a state procedural rule which denies further review because the District Court affirmed Petitioner's

convictions without an opinion. [1.]

Petitioner filed an Application for Habeas Corpus under Title 28 U.S.C. Section 2254 on November 19, 1980. The Petition was denied on May 31, 1983. (App. 8-a-d)

The jurisdiction of this Court is envoked under Section 1254(1), Title 28, U.S.C.A.; Rule 17(a) and Rule 20, of the United States Supreme Court Rules.

CONSTITUTION AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the Constitution of the United States provides in pertinent part: ...; "nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law, ..."

The Fourteenth Amendment to the Constitution of the United States provides in

1. See Florida Rule of Appellate Procedure 9.030(a)(2)(iv) (App.7).

pertinent part: "...; nor shall any state deprive any person of life, liberty or property, without due process of law; ...".

Article I, Section IX. of the Declaration of Rights of the Constitution of the State of Florida (1968) provides:

> " No person shall be deprived of life, liberty or property, without due process of law, or be twice put in jeopardy for the same offense, or compelled in any criminal matter to be a witness against himself."
> (App. 9-a -9-d)

STATEMENT OF THE CASE

In the Trial Court for the Ninth Judicial Circuit in and for Orange County, Florida as well as the Eleventh United States Court of Appeals, the Petitioner's main contention was that the Trial Judge erred in admitting into evidence statements and confessions made by the Petitioner on

July 4, 8, and 10, 1975. There was a lengthy Suppression Hearing held reference a motion to suppress the statements which began on September 18, 1978. The Petitioner set forth extensive evidence that at the time the statements were made by him he was mentally incompetent and could not appreciate the consequences of his actions, nor the true meaning of the Miranda Warnings. The Motion to Suppress was denied by the Trial Court on December 11, 1978. (App. 10a-10-c)

The confessions made by the Petitioner were absolutely essential in order for the prosecution to obtain the conviction in this cause. Without the statements there would have been no conviction.

In 1979, the Petitioner was tried and convicted of two counts of First Degree Murder in Orange County, Florida. He was sentenced to two consecutive life terms in the state penitentiary, without parole for 50 years. (App. 2-a)

Prior to the trial, hearings on the Motion to Suppress established that the Petitioner was found incarcerated in a jail in Ocala, Florida, for stealing an airplane. He was interviewed in that jail by Det. Nazarchuk from Orlando, Florida. That interview took place on July 4, 1975, and was recorded. Det. Nazarchuk stated that the Petitioner appeared quite rational and did not indicate anything out of the ordinary. However, Nazarchuk notes that during the initial interview the Petitioner indicated that he was afriad of the co-defendant Dale Bass. (emphasis supplied). Dale Bass was the co-defendant in this cause and was also charged with double homicides. (App. 11, Transcript of Suppression Hearing, hereinafter referred to as (TS).

The Petitioner stated that the co-defendant got him hooked on herion so he could in fact use him. (App. 12.

It was established the Petitioner used

a gun during the course of the homicides and these homicides were the result of a drug transaction wherein the Petitioner and co-defendant, Dale Bass, went into the apartment in question to purchase twenty five (25) pounds of marijuana and in turn killed the two drug dealers. When the Petitioner was questioned about the gun he used and where he purchased it, he stated he did not want to implicate himself in a federal gun charge and didn't want to answer any further questions regarding the pistol. (App. 13

When the Petitioner was questioned about why he was afraid of co-defendant Dale Bass he stated:

> " It has to do with the conditions under which I met him. I felt that his wife was a witch, and kidnapped me from my old lady, because I was living -- had a happy relationship with my old lady. After meeting them, and going to their house, and partying

with them one night, I was just never the same after that."

App. 14).

A second interview was conducted with Petitioner on July 8, 1975, and it also was recorded. During the course of this interview Petitioner assumed the responsibility for the death of one of the victim's. He stated he was hiding in the bushes outside the house when he heard five shots. He then went into the house and victim Sauer, was lying on the floor moaning and Bass directed him to kill Sauer. He then hit Sauer over the head with a hammer, ashtray, tried choking him with a phone wire, stabing him with a knife and finally, he found a bullet on the floor, put it in the gun and fired it into Sauer killing him. The Petitioner could not explain to the satisfaction of the interviewing officers as to why he was hiding in the bushes when Bass went into the apartment to purchase the drugs.(App.15)

It was established that during the course of the second interview on July 8, 1975, the Petitioner and one of the investigating officers got into a conversation wherein the Petitioner expressed a belief in parapsychology of Jesus being on Venus. (App. 16

The Petitioner was found to be mentally incompetent and unable to stand trial and was housed at the Florida State Hospital for the criminally insane from 1975 through 1978. A Dr. Benjamine Ogborn, Director of the Forensic Program testified that he reviewed the tape recorded statements of Petitioner along with all the other available medical history and felt that at the time the Petitioner confessed, he was legally insane as a result of some mental infirmity, disease, or defect, and did not understand the consequences of what he was doing. He stated that the Petitioner suffered from a chronic schizophrenic illness for a number of

years and that there were some very confusing statements that came out in both the July 4th and July 8th, 1975 confessions which lead him to believe that the schizophrenic disorder was evident at the time of the confessions. (App. 17.)

Dr. Ogborn maintained that it was totally inconsistent for the Petitioner to be concerned about involving himself on a charge dealing with the federal gun laws, and thats why he used an alias name for the purchase of the gun, while at the same time confessing to the homicide. The two in his opinion were completely inconsistent and did not indicate that the Petitioner was rational at the time. There are also medical records in the Petitioner's history that indicated he was treated in California in 1975 at a hospital for a schizophrenic illness. While housed at the Florida State Hospital, according to Dr. Ogborn, the Petitioner was seen by one of the most

eminent psychiatrist in the country a Dr. Shepard Frazier, President of the American Board of Psychiatry and Neurology, who evaluated the Petitioner and felt that he had a schizophrenic disorder. Dr. Ogborn testified that he found the Petitioner to be very open and willing to confess where most of the time while recovering from his psychiatric disorder he was a very guarded individual. He felt that the Petitioner was suffering from delusions and delusions of grandeur, feeling that he had magic powers. This seemed to be coorborated by the fact that the Petitioner was discussing Jesus as being on Venus, that he in fact stole an airplane, crashed it and was arrested, while at the same time not knowing how to fly the plane. There were references to the fact that God would take care of him while he was attempting to fly the plane. (App.18a-c)

Dr. Ogborn emphasized to the Court that he had treated Petitioner personally for

over a period of two and one half years and had stated:

> " I have seen him at times when I did not think he would understand them (Miranda Rights)."

Dr. Ogborn reiterated that based upon his examinations of Petitioner, study of the transcripts of the confessions and all other materials made available to him he felt that the Petitioner did not understand the significance of his Miranda Warnings when he confessed to the crimes. He further stated that during the time he had known the Petitioner he had never seen him go into a complete remission of his illness. (App.19 a-b)

A Mr. Sam Cunningham, Clinical Psychologist at Florida State Hospital for the Criminally Insane, testified at the Suppression Hearing that he had treated the Petitioner over a period of two and one half years while

instutionalized and never seen the Petitioner in a complete state of remission from his mental illness. From his study of the available materials and his almost daily association with the Petitioner, Mr. Cunningham stated that at the time the Petitioner confessed, he somehow felt:

> " In his disturbed thinking, in his disturbed way, he was not going to be held responsible in the strictest sense for what he had done." (App.20a-b)

Dr. J. Lloyd Wilder, a psychiatrist, testified that he had made a complete study of the tape recorded confessions of the Petitioner, which were made available along with complete medical history of the Petitioner and psychological testing done on the Petitioner in 1974 and opined that the Petitioner was unable to understand the consequences of his actions when he confessed on July 4th and July 8, 1975, and felt that there was a real distinct possibility that

there was a real distinct possibility that as a result of the mental illness of the Petitioner, he was compelled to confess to these crimes. (App. 21.)

As previously noted, Petitioner was found mentally incompetent to stand trial in September, 1975, after having been arrested for the offenses July, 1975. Dr. Wilder was appointed by the Court to examine the Petitioner and in September of 1975 found the Petitioner to be capable of understanding the charges against him but not capable of conducting himself throughout a trial. Dr. Wilder noted at that time Petitioner was so bizarre that he didn't think he could work with his lawyer. The bottom line on Dr. Wilder's testimony was that it was his opinion that the Petitioner confessed under the pressure of his schizophrenic illness and the symptoms thereof. (App. 22).

Dr. Michael Gutman the psychiatrist,

testified that he examined the Petitioner's complete medical history and transcripts of the confessions in question and arrived at the opinion that Petitioner was legally insane at the time he confessed on July 4, 8, and 10, 1975. (App. 23)

The Honorable James S. Byrd, Circuit Judge in and for Orange County, Florida during the summer of 1975, was a practicing attorney and was appointed by the Ninth Judicial Circuit Court to represent the Petitioner who had been arrested and charged with two counts of First Degree Murder. Judge Byrd testified that when he first met with the Petitioner in the Orange County Jail, the meeting was very brief because he could not communicate with Petitioner at all. He filed a motion to have Petitioner examined as to his competency to stand trial which ultimately resulted in the Petitioner being committed to Florida State Hospital for the Criminally Insane. Judge Byrd testified

that the Petitioner made reference to the fact that the co-defendant's wife was a witch, that he was compelled to steal an airplane which he did not know how to fly and that there were people outside or in space that were controlling him. (App.24a-c)

The Petitioner's sister, Ann Hill learned of her brother's arrest when she read about it in a newspaper in New York City, that he attempted to steal an airplane. This was June 3, 1975. She visited with her brother over a three or four week period while he was incarcerated in the Ocala, Florida jail, and she was unable to communicate with him in any respect. She testified she was successful in having him committed under the Baker Act which is codified in Florida Statutes pertaining to involuntary hospitalization for mentally ill people.[2]

[2]. F.S. 394.467 dealing with involuntary hospitalization.
(App. 25
F.S. 394.476)

The Baker Act committment was prior to Petitioner being sent to Florida State Hospital for the Criminally Insane. (App. 26 a-b)

The Petitioner, during the months of April and June of 1975 stayed with a Mrs. Mary Lou Clausen and her husband at their apartment in Orlando, Florida. They set him up in his own room and got him a job at the complex doing maintenance work. He lost his job after approximately a four week period and at that time became totally withdrawn. His main form of communication was with the family cat. The last month that he stayed with them he spent most of his time in his room, ate irregularly and talked about having conversations with space travelers. Mrs. Clausen noted that the Petitioner's condition became so progressively worse that you had to more or less tell him what to do in order to get him to react. (App. 27-a-b)

Dr. Robert Kirkland a psychiatrist, testified as a witness for the State and it was his opinion that the Petitioner was mentally competent at the time he gave his statements. (App. 3 and 4).

Dr. Kirkland, was also originally appointed by the trial court to examine the Petitioner in August of 1975 and found that the Petitioner was legally insane. It was furthermore his opinion that at the time the Petitioner confessed on July 4, and 8, 1975, he was legally sane. (App. 28.-a-b)

Dr. Kirkland's original opinion was that the Petitioner was suffering from a mental illness, schizophrenia, paranoid type. Dr. Kirkland saw the Petitioner again May of 1978, after he had been released from Florida State Hospital for the Criminally Insane and found that his thought process had cleared up. Dr. Kirkland noted that when he first saw the Petitioner in August of 1975, he was totally out of it, he did

not adhere to any one subject and made references to supernatural things and felt that great powers had influence on him. (App. 29)

It is important to note that Dr. Kirkland testified that he found the Petitioner to be borderline schizophrenic at the time he confessed on July 4, 1975, as indicated by the Petitioner's statements that he was afraid of the co-defendant, Dale Bass's wife because she was a witch and had kidnapped him and that he had never been the same after that. (App. 30 a-b)

Dr. Kirkland testified that it was his opinion that the Petitioner, on some occasions, up until the first confession of the Petitioner on July 4, 1975, was suffering from a mental illness of paranoid schizophrenia. He further opined that after July 8, 1975, the date of the second confession, it was his opinion that the Petitioner was paranoid schizophrenic on some

occasions. He further testified that all of the time, from August of 1975, up until he was examined on June 1, 1978, it was his opinion that the Petitioner was legally insane. (App. 31)

As previously stated the record affirmatively establishes that there would not have been a conviction for the two counts of First Degree Murder absent the Petitioner's confessions.

The Petitioner's case came on for trial on March 12, 1979, and the jury returned a verdict of guilty to both counts of First Degree Murder on May 16, 1979.

During the course of the trial all of the previously indicated testimony with reference to the expert witnesses and lay witnesses' observations of the Petitioner during the times the confessions were made was reiterated. One additional expert witness was offered by the Petitioner during said trial, a Dr. Moke Williams, who saw

the Petitioner on April 2, 1975, when the Petitioner voluntarily came into his office under an alias name of Charles Gilbert seeking psychiatric medical attention. Dr. Williams classified the Petitioner's mental illness as being schizophrenic reaction paranoid. He further found that from the Petitioner's conversation and history that the Petitioner was having great difficulty in exercising correct judgment and was therefore possibly a candidate for not being legally sane. (App 32 a-b)

Dr. Williams further testified that at the time of the Petitioner's confessions he felt that Petitioner was still suffering from schizophrenia and that he was confussed to the point where he could not distinguish that which was right from that which was wrong. (App. 33 a-b)

The Petitioner appealed to the Florida Fifth District Court of Appeal, which subsequently affirmed his convictions. See

Wilson v. State, 388 So.2d 1134 (5th DCA 1980). Petitioner then filed his Habeas Corpus Petition in the United States District Court for the Middle District of Florida. The District Court rejected Petitioner's contention that his conviction had been obtained in violation of his privilege against self-incrimination stating:

> " The trial court held extensive hearings on the Motion to Suppress. The record reflects contradictory evidence on this issue. This court's thorough review of the record evidence does not lead it to the conclusion that the trial court's findings were erroneous."

(App. 8b-8-c)

A certificate of probable cause was obtained and the Petitioner filed an appeal in the United States Court of Appeals for the Eleventh Circuit raising as error the District Court's determination that the

statements that the Petitioner made on July 4, 8, and 10, 1975 to police officers, were voluntarily made and were properly admitted into evidence in the state criminal trial. (App. 2-a)

The Eleventh United States Court of Appeals affirmed the District Court's findings, the Petition for Rehearing being denied July 25, 1984. See Wilson v. Strickland, 735 Fed.2d 1376 (11th Cir. 1984).

SUMMARY OF ARGUMENT

The Fifth and Fourteenth Amendments of the United States Constitution have been conveniently and consistently overlooked while the courts have rushed to affirm Petitioner's conviction because of the heinous nature of the crime. The Fifth Amendment provides that no one shall be compelled in any criminal case to be a witness against himself and the Fourteenth Amendment provides that no one shall be

deprived of life, liberty or property without due process of law. The evidence in the record unquestionably establishes that the Petitioner confessed to the crimes at a time when he was mentally incompetent and legally insane. Affirmance of the Petitioner's convictions, which convictions essentially relied upon the Petitioner's illegally obtained confessions, is a direct and flagrant violation of the Petitioner's Fifth and Fourteenth Amendment rights.

The United States Court of Appeals for the Eleventh Circuit's decision in Wilson v. Strickland, 735 Fed.2d 1376 (11th Cir. 1984), in affirming Petitioner's conviction is in direct conflict with this Honorable Court's decision in Blackburn v. Alabama, 361 U.S. 199, 4 L.Ed.2d 242, 80 S.Ct. 274 (1960). In Blackburn, the United States Supreme Court reversed the defendant Blackburn's conviction for robbery wherein the most damaging piece of evidence against him

was his confession. The evidence established the strongest probability, that the defendant Blackburn, was insane and incompetent at the time he confessed. The Court held that such evidence could not be used against Blackburn.

The Eleventh United States Court of Appeals' decision conflicts with the United States Supreme Court decisions in Blackburn v. Alabama, supra, and Culombe v. Connecticut, 367 U.S. 568, 6 L.Ed.2d 1037, 81 S.Ct. 1860 (1961) wherein the Courts have insured that a criminal defendant will not be convicted by evidence which transgresses the imperatives of fundamental justice and does not have for their basis the due process clause of the Fourteenth Amendment of the United States Constitution.

The Petitioner conceeds that the trial court's competency determination constituted a finding of fact. However, the Eleventh United States Court of Appeals decision is in conflict with that area of the law as set

forth in United States v. Wertz, 625 Fed.2d 1128 (4th Cir. 1980), Moore v. Ballone, 448 Fed.2d 1789 (Dist.Ct.E.Dist.Va.) and Jurek v. Estelle, 623 Fed.2d 929 (5th Cir. 1980), wherein said cases point out that when considering the issue of voluntariness of a confession, it is the affirmative duty of the Appellate Court to examine the entire record and make an independent determination on the ultimate issue of voluntariness.

The Eleventh United States Court of Appeal's decision is in further conflict with the area of the law established by Marshall v. Lonberger, ___U.S. ___, 103 S.Ct. 843, 850, 74 L.Ed.2d 646, 657, (1983), which court ruling requires the Appellate Court to insure that the state court's factual findings do not lack "fair support" in the record.

Petitioner maintains that a fair review of the record, which contains the voluminous history of the Petitioner's long

standing mental illness and the fact that virtually all the medical experts, including the medical experts for the state, opined that the Petitioner confessed at a time that he was mentally incompetent or that the statements in themselves showed evidence of his schizophrenic illness, necessitate a finding that the Petitioner's statements were involuntarily made and thereby could not be used against him in his state court trial. Petitioner maintains that the trial court's findings cannot be fairly supported by the record in this cause.

The Petitioner's conviction should be set aside and a new trial ordered, prohibiting the use of the involuntary confessions.

QUESTION PRESENTED

Did the United States Court of Appeal Eleventh Circuit, error in affirming the District Court for the Middle District of Florida, Orlando Division, Order Denying the Petitioner's Habeas Corpus Petition filed pursuant to Title 28 U.S.C. Section 2254, wherein Petitioner maintained that his conviction in the state court proceedings was obtained in violation of his privilege against self-incrimination in view of the fact that the Petitioner's statements were involuntarily made and therefore improperly admitted into evidence at his state criminal trial?

ARGUMENT

The Eleventh United States Court of Appeal's decision in affirming the District Court's denial of our Petition for Writ of Habeas Corpus, is grounded upon the proposition that there was fair support in the record for the trial court's factual deter-

minations in that the Petitioner's confessions were voluntarily made. This decision as we contend is made without a complete review of the record, which the Appellate Court is required to make in order to make an independent determination on the ultimate issue of voluntairness of the Petitioner's confessions.

In United States v. Wertz,625 Fed.2d 1128 (4th Cir. 1980), the issue confronting the court was to whether or not the defendant's statements should have been suppressed in view of the fact that his statements were made at a time when the undercover police officer had a gun pointed at him threatening his life. The District Court as the trier of fact will only be disturbed on appellate review for clear error. However, with respect to the determination of the mental state of an accused at the time of a confession and the assessment of its

legal significance, the Appellate Court is less circumscribed in its review and a independent review of the record is proper.

In Moore v. Ballone, 488 Fed.Supp. 798 (Dist.Ct.E.Dist.Va. 1981), it was held that factual issues concerning voluntariness of a petitioner's inculpatory statements made under Miranda, unresolved by the state trial court at a suppression hearing, are presumed to be correct on a Federal Habeas Corpus Review, unless the Federal Court concludes that they are not fairly supported by the record. In the event the trial court applied improper constitutional standards or other principals of Federal Law to the historical facts, the Appellate Court may and must indeed make its own determination of the law. (At page 802).

The United States Court of Appeal's decision is in direct conflict with the case of Jurek v. Estelle, 623 Fed.2d 929 (5th Cir. 1980), wherein it was held that on

the issue of the voluntariness of a confession, the Court of Appeals may substitute its own judgment for that of the District Court, even in the absence of conclusion that the District Court's ruling was clearly erroneous. This was a case wherein the Petitioner was convicted of First Degree Murder and sentenced to death and petitioned for a Writ of Habeas Corpus attacking the voluntairness of his confessions, used during the course of his trial. The Fifth Circuit points out that the Supreme Court has frequently stated:

> " That it is our affirmative duty to examine the entire record and make an independent determination of the ultimate issue of voluntairness."

See also the following cases:

Beckwith v. United States, 425 U.S. 341, 348, 96 S.Ct. 1612, 1617, 48 L.Ed.2d 1 (1976);

Davis v. North Carolina, 384 U.S. 737, 741, 42 86 S.Ct. 1761, 1764, 16 L.Ed.2d 895 (1966);

Haynes v. Washington, 373 U.S. 503, 515-16, 83 S.Ct. 1336, 1344, 10 L.Ed.2d 513 (1963); Spano v. New York, 360 U.S. 315, 316, 79 S. Ct. 1202, 1203, 3 L.Ed.2d 1265 (1959); Ashcraft v. Tennessee, 322 U.S. 143, 147-48, 64 S.Ct. 921, 88 L.Ed.2d 1192 (1944); Lisenba v. California, 314 U.S. 219, 237, 62 S.Ct.280, 290, 86 L.Ed. 166 (1941).

The Court points out it will not disregard or overturn specific findings of facts made by the District Court, unless they are clearly erroneous. However, where some or all of the evidence was not the live testimony of witnesses, but instead consisted of transcripts, depositions, or documents reviewed by the lower court, the clearly erroneous rule will not apply with full force where the appellate court is in as good a position as the lower court to evaluate the testimony that is crucial to the case.

In Jurek, supra, the facts showed that a 10 year old, Wendy Adams disappeared.

Jurek was awakened at his parent's home at approximately one o'clock on August 17th by two police officers acting on a report that Wendy had been seen screaming for help in Jurek's truck.

Jurek was questioned and read his Miranda rights. He was placed under arrest at 2:30 a.m. on a "hot check" charge. He was questioned again that morning at 9:00. He volunteered to take a polygraph test. He was confronted with the results that said he had lied. Jurek then gave an oral confession of responsibility for Wendy Adams' death.

He gave conflicting versions of the crime, but his statement led to discovery of the girl's body. He was taken before a Magistrate, and signed a Magistrate's certificate. Jurek was to be transferred from Cuero to Victoria, Texas, and the process of obtaining a written confession commenced. He was then brought back to Cuero for further

interrogation.

The Defendant gave two confessions. The first one was held voluntary and the second was held involuntary and its use in trial was improper. The second confession was given in order to clear up the conflicts which arose in his first confession.

The Court points out in considering the voluntairness of a confession the Court must take into account a defendant's mental limitations to determine whether through susceptibility to surrounding pressures or inability to comprehend the circumstances the confession was not a product of his own free will.

In holding one confession to be valid and another invalid, the court points out that it was in accord with the purpose and theory of appellate review of voluntariness issues. It stated:

" We sit to review the sum of the facts, and to determine if, and at

what point, the totality of those facts renders a confession so suspect that to admit it into evidence would deny the defendant due process of law, and contravene the prohibition against compelled self-incrimination found in the Fifth Amendment."

The Jurek, decision is important factually in that the Court's decision to suppress the second statement, found the accused as a mentally deficient person who was functionally isolated from all but his interrogators and was not assisted by counsel. They further found that he had executed a valid first confession, essentially solving the crime under investigation and that the second confession was directed towards an amendment of his earlier confession to include information so minimally suggested as to amount to a prosecutorial hunch. The Court found that the renewed interrogation

resulting in the second confession was therefore facially suspect in that it achieved the precise results sought by the prosecutor, enhancing in a manner unknown to the defendant the potential penalty to that of death, which he was not aware of. The court in essence held that the risk of involuntariness was so great that the confession cannot be admitted in consistency with due process guarantees and the privilege against self-incrimination. (emphasis supplied)

The court of appeal's applied the rule of law set forth in Marshall v. Lonberger, ___U.S.___, 103 S.Ct. 843, 74 L.Ed.2d 646, which provides that a Federal Habeas Court must more than simply disagree with the state court before rejecting its factual determinations, instead it must conclude that the state court's finding lacked even "fair support" in the record. We maintain that it is virtually impossible for the Appellate Court to make such a finding without a re-

view of the entire record in order to make an independent decision on the competency issue. There is no question that the Eleventh United States Court of Appeals refused to review the entire record of the suppression hearing in order to make that determination. (App. 4-a, Opinion of U.S. Court of Appeals)

The United States Court of Appeals decision in affirming the District Court's findings is even in conflict with the decision of Marshall v. Lonberger, supra, in view of the fact that a close reading of the factual situation in Lonberger,will show that nowhere in the record was there a conflict with reference to the facts which the Supreme Court relied upon in finding that the trial judge's factual findings were fairly supported by the record.

Lonberger, brought a Habeas Corpus Petition claiming that admission into evidence in his Ohio murder trial, the fact of an

Illinois conviction based upon a guilty plea, had deprived him of a Federal Constitutional right in view of the fact that Lonberger maintained that the guilty plea was not knowingly and voluntarily made.

The Ohio trial court conducted a hearing on a Motion in Limine, before the trial on the murder charge, in order to determine whether Lonberger's plea was voluntarily entered in the Illinois court. Lonberger took the stand and submitted himself to direct and cross-examination. At the conclusion of his testimony the court made the following findings:

> " The Court finds on the evidence presented, that the defendant is an intelligent individual well experienced in criminal process and well represented at all stages of the proceedings by competent and capable counsel in Illinois. On review of the certified copy of the Illinois

proceedings and a transcript of the plea of guilty, the court finds that every effort was taken to safeguard and to protect the constitutional rights of the defendant. Therefore, the court finds the defendant intelligently and voluntarily entered his plea of guilty in the Illinois court." JA-99-100.

The record of the proceedings in the Ohio State Court formed the basis of Lonberger's application for habeas corpus relief in the United States District Court for the Northern District of Ohio. The District Court denied him the relief sought. The District Court of Appeals for the Sixth Circuit, reversed the judgment of the District Court and ordered the Writ of Habeas Corpus issued. The Supreme Court granted Certiorari and vacated and remanded the judgment of the Court of Appeals for reconsideration in light of Sumner v. Mata, 455

U.S. 591, 102 S.Ct. 1303, 71 L.Ed.2d 480 (1982).

The Court of Appeals for the Sixth Circuit apparently held that Lonberger had an imcomplete understanding of the charge against him, and the Court felt that his plea was inadequate to show that he was aware that he was pleading guilty to the charge of Attempted Murder. The Supreme Court in holding that the Sixth Circuit erroneously applied the "fairly supported by the record" standard enunciated in Title 28 USCA Sections 2254(d), found that the trial court's ruling allowing the record of the conviction to be admitted into evidence in support of the specification is tentamount to a refusal to believe the testimony of the respondent.

The Supreme Court reversed the Sixth Circuit in essence holding that the factual findings of the trial judge, those being, that Lonberger was an intelligent individual

well experienced in criminal process and represented in all stages of the proceedings, and that therefore, his plea was voluntarily and intelligently entered, were fairly supported by evidence in the record.

The Petitioner would argue that the Appellate Court could have, without substituting its judgment for that of the trial court, looked at the factual representations in the record made by both the expert and lay witnesses and must have come to a decision that no rational fact finder could have found that the Petitioner was both mentally and legally competent at the time he confessed.

In Lonberger, there is authority for the proposition that when Congress used the language "fairly supported by the record", it intended to authorize federal review of the state court's credibility determinations that are authorized in appeals within the federal system itself. (At page 659).

If the Appellate Court had aligned itself with the case authority previously cited and applied the proper tests in reviewing the trial court's fact findings and analyzed those facts, with the facts presented in the case of Blackburn v. Alabama, 361 U.S. 199, 4 L.Ed.2d 242, 80 S.Ct. 274 (1960), it would have found that the Petitioner's confessions were not voluntarily made and that the trial judge's findings are not fairly supported by the record. Consequently, the United States Court of Appeals' decision is in direct conflict with the case of Blackburn v. Alabama. In Blackburn, this Honorable Court reversed the defendant's conviction for robbery wherein the most damaging piece of evidence against him was his confession. The evidence established the strongest probabiltiy that the defendant was insane and incompetent at the time of his confession. (emphasis supplied)

The record established that the defendant was diagnosed as "schizophrenic reaction, paranoid type, and further characterized as incompetent. Prior to the robbert, the defendant had been treated for mental illnesses. The robbery occurred on April 19, 1948, and the defendant was arrested shortly thereafter. He confessed on May 8, 1948. Following the confession it was reported to the circuit judge that the defendant exhibited symptoms of insanity a mental return was had and the defendant was examined by three physicians court appointed and based upon their reports, the defendant was declared mentally incompetent to stand trial, and was ordered to the Alabama State Hospital for the mentally ill from July 1948 to October 1952. (emphasis supplied)

The prosecution sought to omit the statements into evidence against the defendant at trial. Defense counsel objected

presenting the testimony of two of the three treating doctors at the state mental hospital which opined that the defendant was "most probably insane and incompetent", on May 8, 1948, when he confessed. (emphasis supplied)

The prosecution produced evidence of Dr. Richards, also on the medical staff, who stated that although he originally signed the committing papers concurring in the finding that the defendant was insane on the day of the crime, that he did a complete about fact by opining that the defendant was normal when he first saw him, his mental condition was normal on the date of the crime and good on the date of the confession. Furthermore, he never saw the defendant suffer any psychotic episodes. The prosecution also presented the testimony of the Deputy Sheriff who took the confession and he stated when questioned about the defendant's behavior, that Blackburn, "answered like any normal

person I have examined." (emphasis supplied) The trial judge admitted the statements into evidence.

In reversing the conviction in holding that the statement should not have been used against the defendant, the Supreme Court stated that the evidence undisputably established that there is a strong possibility that the defendant was insane and incompetent when he confessed. (emphasis supplied) The Court stated:

> "Surely in the present state of our civilization the most basic sense of justice is affronted by the spectacle of incarcerating a human being upon the basis of a statement he made while insane; and this judgment of unreliability of the confession, the lack of a rational choice of the accused, or simply a strong conviction that our system of law enforcement should not operate so as to take advantage

of a person in this fashion."

(At page 249)

It is extremely important to note that in Blackburn, the Supreme Court realizes that we are dealing with probabilities, that being that it is quite possible that the defendant confessed during a period of complete mental competence or remission. The court noted that in the past it had reversed convictions where psychiatric evidence revealed that the person that confessed was of "low mentality if not mentally ill,' citing Fikes v. Alabama, 352 U.S. 191, L.Ed.2d 246, 77 S.Ct. 281, or had a history of emotional instability, Spano v. New York, 360 U.S. 315, 3 D.Ed.2d 1265, 1272, 79 S.Ct. 1202.

The Court makes specific note of the chief deputy's testimony that the defendant talked "sensible" and was clear eyed and did not appear to be nervous when questioned. The Court states:

"Without any evidence in the record

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indicating that these observed facts bore any relation to Blackburn's disease or symptoms of a remission of his illness, we are quite unable to conclude that such an inference can be drawn."

In conclusion the court stated:

" ... the evidence here clearly established that the confession most probably was not the product of any meaningful act of violition. Therefore, the use of this evidence to convict Blackburn transgressed the imperatives of fundamental justice which find their expression in the Due Process Clause of the Fourteenth Amendment and the judgment must be reversed."

We would argue that the same can be said of the Petitioner's case as was said by this Honorable Court in Blackburn. The Petitioner's confessions are certainly

suspect due to the fact that they may have been involuntarily made in view of the history of the Petitioner's mental disorders. It certainly can be argued that the risk of involuntariness is so great that the confessions should not have been admitted in consistency with the due process guarantees and privileges against self-incrimination. We argue that the record is replete with testimonial assertations that the Petitioner was mentally incompetent and legally insane when he confessed to the crimes. In light of the rational of the Blackburn decision, it would be virtually impossible for the Appellate Court to conclusively find that the Petitioner was both sane and competent at the time of the confessions in view of the overwhelming reasonable doubt which exists in the record of the suppression hearing. Petitioner has argued and continues to do so that the trial court's

findings are not fairly supported by the record and the Petitioner's conviction should have been reversed for a new trial.

CONCLUSION

It is most respectfully urged that this Honorable Court should grant a Writ of Certiorari for the following reasons:

1. That the United States Court of Appeals for the Eleventh Circuit has failed to apply the proper standards in reviewing the state trial court's findings of fact which are not fairly supported by the record.

2. That by a review of the record of the suppression hearing, the Appellate Court would have determined that the state court's credibility determinations were not supported by the record and such credibility determinations are authorized within the federal system.

3. The Fifth and Fourteenth Amend-

ments of the United States Constitution forbid the use of such evidence, i.e. confessions obtained from the Petitioner at a time when he was most probably mentally incompetent.

RESPECTFULLY SUBMITTED, this 21st day of September, 1984.

ROBERT J. BUONAURO, P.A.
318 Bradshaw Building
14 E. Washington Street
Orlando, Florida 32801
(305) 841-1940
For the Petitioner

CERTIFICATE OF SERVICE

I, Robert J. Buonauro, a member of the Bar of the Supreme Court of the United States and counsel of record for Gary Francis Wilson, hereby certifies that on the 21 day of September, 1984, pursuant to Supreme Court Rule 28(3), I served three copies of the foregoing Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit, with attached Appendix on each of the following parties:

C. G. Strickland, Warden of Florida State Prison, and Attorney General, Jim Smith, with First Class Postage, pre-paid, properly addressed to Jim Smith, Attorney Gen. and the Respondent's attorney of record, Assistant Attorney General, Sean Daly, 125 N. Ridgewood Avenue, 4th Floor, Daytona Beach Florida, 32014, this 21 day of

September, 1984.

ROBERT J. BUONAURO
for Petitioner

Sworn to and subscribed before me,
this 21 day of September, 1984.

Notary Public
State of Florida at Large

My Commission Expires:

Notary Public State of Florida at Large
My Commission expires Sept. 25, 1985

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

NO. 83-3453

GARY FRANCIS WILSON,
Petitioner-Appellant,

versus

C.G. STRICKLAND, the Warden of Florida State Prison and Attorney General, JIM SMITH,
Respondents-Appellees.

Appeal from the United States District Court for the Middle District of Florida

---

(May 30, 1984)

Before RONEY and HENDERSON, Circuit Judges, and DYER, Senior Circuit Judge.

PER CURIAM:

Gary Francis Wilson, a Florida state prisoner, appeals from the denial of his petition for a writ of habeas corpus in the United States District Court for the Middle District of Florida, 28 U.S.C. §2254. Wilson assigns as error the district court's determination that certain statements made by him to police officers were made voluntarily and were properly admitted into evidence at his state criminal trial. We have examined the record of this case and finding no error, affirm the district court's denial of the petition.

In 1979, Wilson was tried and convicted of two counts of first degree murder in Orange County, Florida. He was sentenced to two consecutive life terms in the state penitentiary.

Prior to Wilson's state trial, the court conducted an exhaustive series of evidentiary hearings on his motion to suppress certain statements and confessions

made to police investigators on July 4,8 and 10, 1975. Wilson claims that at the time he made these statements, which directly implicated him in the murders, he was mentally incompetent and legally insane. He maintains that as a result of his mental illness he did not understand or comprehend the significance of Miranda warnings given by the officers, and hence, the statements were made involuntarily and should have been suppressed by the state trial court.

At the pretrial hearing, there was contradictory evidence of Wilson's mental state at the time the statements were made to the police. Dr. Robert Kirkland, a psychiatrist

called by the state, testified that, in his opinion, the petitioner was mentally competent at the time he gave the statements. On the other hand, several defense experts stated that Wilson suffered from mental illness at the time of the statements. The trial court also heard the testimony of police officers concerning the circumstances of the police interrogation and Wilson's coherence and demeanor during the questioning. Additionally, tape recordings of Wilson's statements to the police were admitted into evidence.

At the conclusion of the hearing, the trial court accepted Dr. Kirkland's analysis and the other evidence introduced by the state over that offered by the defendant and found that Wilson was not insane or mentally incompetent when he made the statements. The trial court then made the ultimate finding that under the totality of the circumstances Wilson's statements had been vol-

untarily and intelligently made and were admissible in evidence.

After his conviction, Wilson appealed to the Florida Fifth District Court of Appeal which subsequently affirmed his conviction. Wilson then filed his habeas corpus petition in the United States District Court. The district court rejected Wilson's contention that his conviction had been obtained in violation of his privilege against self incrimination, stating:

> The trial court held extensive hearings on the motion to suppress. The record reflects contradictory evidence on this issue. This court's thorough review of the record evidence does not lead it to the conclusion that the trial court's findings were erroneous.

Wilson essentially asks that we resolve the conflicting evidence of his sanity anew by substituting our judgment for that of the state trial court. He does not dispute the existence of the evidence upon which the trial court relied in making its determination, but instead simply contends that the other evidence presented by the defense was so compelling that the trial court necessarily erred in giving credence to the state's witnesses. Wilson would have this court review the entire record and make an independent decision on the competency issue.

The trial court's competency determination constituted a finding of fact which served as a basis for the resolution of the ultimate issue of the voluntariness. See United States v. Kreczner, 636 F.2d 108, 110 (5th Cir. Unit B 1981). [1/] 28 U.S.C. §2254(d) accords the presumption of correctness to "a determination after a

hearing on the merits ... made by a state court of competent jurisdiction." Section 2254(d) requires the federal courts to give a high measure of deference to the factfindings made by the state courts. Sumner v. Mata, 455 U.S. 591, 598, 102 S.Ct. 1303, 1307 71 L.Ed.2d 480, 487 (1982). "This diference requires that a federal habeas court more than simply disagree with the state court before rejecting its factual determinations. Instead,

---

1/ In Bonner v. City of Prichard, 661 F.2d 1206 (11th Cir. 1981) (en banc), the Eleventh Circuit adopted as precedent the decisons of the Fifth Circuit rendered prior to October 1, 1981.

it must conclude that the state court's findings lacked even 'fair support' in the record." Marshall v. Lonberger, ___U.S.___, 103 S.Ct. 843, 850, 74 L.Ed.2d 646, 657 (1983), quoting 28 U.S.C. §2254(d)(8).

Given this standard of review, we have no problem in upholding the district court's denial of the petition for habeas corpus. The trial court record reflects expert testimony by Dr. Kirkland that Wilson was neither insane nor mentally incompetent when he gave his statements, as well as supportive testimony by police officers of their observations of the defendant during the interrogation. Moreover, the trial judge had the benefit of listening to the tape recordings of Wilson's statements. Particularly because this was a "battle of experts" situation which required the trial court to make credibility determinations, such evidence was wholly sufficient to support the trial court's finding that

Wilson was mentally competent.

We agree with the district court that there was fair support in the record for the trial court's factual determination. Thus, like the district court, we find no error in the trial court's resolution of ultimate issue.

The judtment of the district court denying the petition for writ of habeas corpus is

A F F I R M E D.

IN THE UNITED STATES COUR OF APPEALS

FOR THE ELEVENTH CIRCUIT

NO. 83-3453

GARY FRANCIS WILSON,

Petitioner-Appellant,

versus

C. G. STRICKLAND, et al.,

Respondents-Appellees.

Appeal from the United States District Court
for the Middle Districe of Florida

ON PETITION FOR REHEARING
(May 30, 1984)

Before RONEY and HENDERSON, Circuit Judges,
and DYER, Senior Circuit Judge.
PER CURIAM:

The petition for rehearing filed in the above entitled and numbered cause and the same is hereby denied.

ENTERED FOR THE COURT:

UNITED STATES CIRCUIT JUDGE

RULE 9.030. Jurisdiction of Courts
(a) Jurisdiction of Supreme Court.

(2) Discretionary Jurisdiction. The discretionary jurisdiction of the Supreme Court may be sought to review:

(iv) expressly and directly conflict with a decison of another district court of appeal or of the Supreme Court on the same question of law;

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

GARY FRANCIS WILSON,
Petitioner,
vs.
C. G. STRICKLAND and
JIM SMITH,
Defendants.
_____/

O R D E R

This cause is before the Court on the Petition for Writ of Habeas Corpus filed by, GARY FRANCIS WILSON, through counsel, pursuant to 28 U.S.C.§2254. The Petition raises two grounds.

The first ground raised is that Petitioner's conviction was obtained in violation of his privilege against self-incrimination. Petitioner gave certain statements and confessions to the authorities. Petitioner's motion to suppress was denied by the trial court and the statements were utilized at trial. Petitioner asserts that he was compelled to confess and that by doing so he did not fully appreciate or

understand the true meaning of the Miranda warnings given to him.

The trial court held extensive hearings on the motion to suupress. The record reflects contradictory

Evidence on the issue. This Court's thorough review of the record evidence does not lend it to the conclusion that the trial court's findings were erroneous.

The second ground raised is that the Petitioner was denied a fair trial and due process of law guaranteeing him the right to present evidence by the trial court's refusal to allow him to present evidence to the jury that he had been previously "adjudicated legally insane". Petitioner was, however, allowed to show he had previously been found to have been legally incompetent to stand trial. The Court concludes this action of the trial court, even if an evidentiary error, did not deprive Petitioner of a fundamentally fair trial.

Accordingly, it is

ORDERED that the Petition for Writ of Habeas Corpus be and the same is hereby denied.

DONE AND ORDERED, at Orlando, Florida, this the 31st day of May, 1983.

Elizabeth A. Kovachevich
United States District
Judge

Copies to:

Robert J. Buonauro, Esquire
318 Bradshaw Building
14 E. Washington Street
Orlando, Florida 32801

Assistant Attorney General, Sean Daly, Esq.
125 North Ridgewood Avenue, 4th Floor
Daytona Beach, Florida 32014

FIFTH AMENDMENT

No person shall be held to answer for a capital or other infamous crime unless on a presentment of indictment of a grand jury, except in cases arising in the land or naval forces or in the militia, when in actual service, in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled to any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law, nor shall private property be taken for public use without just compensation. (page 20)

FOURTEENTH AMENDMENT

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the law. (Page 23)

Art. 1, § 9 Florida Constitution

§9. Due process

No person shall be deprived of life, liberty or property without due process of law, or be twice put in jeopardy for the same offense, or be compelled in any criminal matter to be a witness against himself.

Title 28 U.S.C.A. Section 2254 State custody; remedies in Federal courts

§2254

(d) In any proceeding instituted in a Federal Court by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court, a determination after a hearing on the merits of a factual issue, made by a State court of competent jurisdiction in a proceeding to which the applicant for the writ and the State or an officer or agent thereof were parties, evidenced by a written finding, written opinion, or other reliable and adequate written indicia, shall be presumed to be correct, unless the applicant shall establish or it shall otherwise appear, or the respondent shall admit -

(8) or unless that part of the record of the State court proceeding in which the determination of such factual issue was made, pertinent to a determination

of the sufficiency of the evidence to support such factual determination, is produced as provided for hereinafter, and the Federal court on a consideration of such part of the record as a whole concludes that such factual determination is not fairly supported by the record:

And in an evidentiary hearing in the proceeding in the Federal court, when due proof of such factual determination has been made, unless the existence of one or more of the circumstances respectively set forth in paragraphs numbered (1) to (7), inclusive, is shown by the applicant, otherwise appears, or is admitted by the respondent, or unless the court concludes pursuant to the provisions of paragraph numbered (8) that the record in the State court proceeding, considered as a whole, does not fairly support such factual determination, the burden shall rest upon the applicant to

establish by convincing evidence that the factual determination by the State court was erroneous.

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT, IN AND FOR ORANGE COUNTY, FLORIDA

INFORMATION NO. CR 75-2013
Division 11

STATE OF FLORIDA

vs.

GARY FRANCIS WILSON
_____/

ORDER ON MOTION TO SUPPRESS CONFESSIONS

THIS CAUSE, came on to be heard on the motion of the defendant to suppress the written and oral statements made by the defendant to agents of the Orange County Sheriff's Department.

The Court has on separate days carefully listened to the evidence offered, including the several expert witnesses called and has carefully listened to argument of counsel.

The thrust of the motion is that at the time of the making of the statements by the defendant, July 4, 1985 and July 8, 1975,

the defendant was affected with mental illness to the extent that he did not understand and appreciate the constitutional rights about which he was advised and consequently the confessions and statements made by him were therefore not made freely, voluntarily and intelligently.

In arriving at the conclusions herein expressed, the Court has attempted to reconcile some of the testimony of the expert witnesses and finds that in certain instances this is quite difficult. However, rejecting that evidence which the Court finds to be worthy of belief, the Court affirmatively and by a vast perpondance of creditable evidence finds; first, that the defendant was fully advised as to all of his constitutional rights on July 4, 1975 and July 8, 1975 prior to the time of the making of the statements sought to be suppressed. That he had sufficient mental capacity to understand and appreciate

these rights. The defendant was made no promises, representations or misrepresentations of leniency or otherwise which would influence his making the statements which were forthcoming. That no forms of coercion, physical or psychological, were practiced upon the defendant and that no intimidation or violence were used. That on the days at the times of the making and giving of the statements, the defendant, if suffering from any mental illness, was enjoying a lucid period; that is to say, any mental illness he suffered from, if any, was at this time in remission. That the defendant was both sane and competent at the time he made the statements sought to be suppressed. Accordingly,the statements were made freely, voluntarily and intelligently. That none of the symptoms which some of the expert witnesses indicated were characteristic of the defendant's mental illness were present at the

critical times, such as, disconnected, disorganized and illogical thought processes. The witness, Doctor Kirkland, in fact testified that the indications were to the contrary; to-wit, that he was clear, concise, logical, responsive and lacked any anxiety incident to the statements he was making. In fact, Doctor Kirkland could find no symptoms of mental illness on the days in question.

The Court has carefully considered cases submitted by counsel including Reddish v. State, Fla., 167 So.2d 858; State v. Chorpenning, Fla. App., 294 So.2d 54; Demattia v. State, Fla. App., 292 So.2d 390; Dawson v. State, Fla., 139 So.2d 408; and Blackburn v. Alabama, 361 U.S. 199, 4 L. Ed.2d 242, 80 S.Ct. 274.

The Court has noted the time and effort spent in the preparation by counsel of this proceeding and appreciates the same. It is upon consideration thereof,

ORDERED AND ADJUDGED that the motion of the defendant to suppress be and the same is hereby denied.

DONE AND ORDERED, In Chambers at Orlando, Orange County, Florida, this 11th day of December, 1978.

CECIL H. BROWN
Circuit Judge

Copies to:

Robert J. Buonauro, Esq., 607 Bradshaw Building, 14 E. Washington Street, Orlando, Florida Attorney for the defendant; and

Richard Combs, Esq., Suite 400 Pan American Bank Building, Orlando, Fl.

(ST) Page 501 Lines 8-13

Q. During the course of the first part of your interview, prior to being taped, could you describe Mr. Wilson's demeanor?

A. It was quiet, rational; there appeared to be no problems whatsoever. He didn't indicate anything out of the ordinary.

(ST) Page 502 Lines 9-14

Q. At any time during the course of your interview, this initial interview in Marion County, did Mr. Wilson indicate to you that anybody was out to get him, or that the police were out to get him, or --

A. No. He just indicated that he was a little afraid of Dale Bass.

(ST) Page 515 Lines 4-

Q. Is there anything else that you'd like to add regarding Dale Bass?

Line 11-14

... I know he's a heroin dealer. I know some of his heroin dealer contacts; I know where they live. I know he's been doing heroin for a long time. I know that he used me, got me hooked on heroin, so he could use me also.

(ST) Page 516) Lines 2-11

Q. What type of weapon was it?

A. A .25 automatic.

Q. A .25. Where did you purchase that weapon?

A. Somewhere in Orlando.

Q. Do you recall the name of the store?

A. No. It was under a phony name.

Q. You used a phony name?

A. Right.

Q. What name did you use?

A. (Inaudible).

(On the actual transcript of the confession introduced into evidence the Petitioner stated here that he did not want to implicate himself in a federal gun charge or answer any further questions.)

(ST) Page 521 Lines 24-25 -Page 522 Lines1-6

Q. Why are you saying your're afraid of Dale Bass?

A. It has to do with conditions under which I met him in Delaware at a party. I felt that his wife was a witch, and kidnapped me from my old lady, because I was living -- had a happy relationship with my old lady.

And after meeting them, and going to their house, and partying with them one night, I was just never the same after that.

(ST) Page 682 Lines 6-17

helmet. It was some excuse he used for it. I was still in the bushes across the street when about 15 minutes later I heard about five gunshots. I then went across the street when he came out and waved me over. I went into the house with him and David Palmer was dead already, not moving. And Jeff Suare was laying there moaning. And Dale just said to me, kill him. I tried hitting him over the head with a hammer and an ashtray and tried choking him with a phone wire. And finally found a bullet on the floor and put it in the gun and fired it into Jeff and I killed him then.

(ST) Page 687 Lines 19-25

Mr. Shultz: It still doesn't make sense why you were waiting in the bushes and waiting for his signal to come across the street if you were't armed, if you couldn't do anything after you got there.

A. It doesn't make sense, but that's the way it was.

(ST) Page 712 Lines 15-20

Q. Are you stating that you don't recall the conversations between Shultz and Mr. Wilson about Jesus being on Venus or ...

A. (Interposing) No, no, not in verbatim. I know they talked about Venus and about Jesus, nothing in verbatim that I can recall.

(ST) Page 551 Lines 8-23

A. Yes. Based on the information that I have read, and also based on my knowledge of Mr. Wilson over a two and a half year period, from 1975 to 1978, having reviewed all the available information that we had at the hospital, I do not feel that at that time he was competent to give a confession.

Q. Are you able to say that he was legally insane at the time of the confessions or that as a result of some mental infirmity decease, or defect, he didn't understand the consequences of what he was doing?

A. Yes. From my standpoint, he has had a chronic schizophrenic illness for a number of years. There are some things that came out in the confession, and there were some very confusing statements that came out in both the July 4th and July the 8th, 1975, confessions, which, to me, indicate that he had a schizophrenic disorder, which was evident at that time.

(ST) Page 551 Lines 24-25

Q. Are you able to say then that as a result of some mental infirmity, disease or defect, he wasn't aware of the

(ST) Page 552 Lines 1-8

consequences of his actions, or what he was doing at the time of his confessions?

A. I don't feel like he was. I think one of the key things that points that out is his concern about the Federal Gun Laws, and why he would not give his name there, and the fact that he was confessing to a very grave crime. The two are completely inconsistent. And to me, it does not indicate that he was rational at the time.

(ST) Page 553 Lines 20-25

A. Well, I took into consideration the entire history of him. We had records that were received from California in 1975 which indicated that he was admitted there for a period of time. I'm not sure which month.

It was either February or March, I think. And there, he was treated for what we call a schizophrenic illness. He has been evaluated by many private

(ST) Page 554 Lines 1-16

psychiatrists, and given a diagnosis of a schizophrenic illness. He has had the same diagnosis at the hospital on repeated occasions. He was seen by one of the, I think, eminent psychiatrists in the country, a year ago, Dr. Shepherd Frazier, who was, at one time, the President of the American Board of Psychiatry and Neurology, who evaluated Mr. Wilson, and felt that he had a schizophrenic disorder.

I think there's no doubt that he does have this type of mental illness. From what I've heard about his behavior surrounding that time, it appears that he was quite psychotic when he was observed by those people. His behavior during the confessions was out of keeping with the ordinary

behavior, when he was usually much more guarded than that.

I think the fact that he was so free to give his confession indicates that there was something certainly wrong with him at that time.

(ST) Page 555 Lines 24-25

Q. You were made aware of the fact that Mr. Wilson was taken into custody on or about June 3rd of '75, after he stole

(ST) Page 556) Lines 1-7

an airplane and crashed it in Ocala?

A. Yes.

Q. Not knowing how to fly the airplane?

A. Not knowing how to fly. And, as I understand, there were some references to God, that he would be taken care of by God, which goes back to what I was saying earlier. These are the kind of delusions that he was having, of grandure.

(ST) Page 574 Lines 11-23

Q. When Mr. Wilson was at his severest when you observed him, is it your opinion that he would not understand what we call the Miranda Rights?

A. Yes. I have seen him at times when I did not think he would understand them.

Q. Do you feel, from your examination, that he understood what his Miranda Rights were on the 4th of July and the 8th of July?

A. Based on what?

Q. Based upon all your examinations of both Mr. Wilson, and the transcripts, and the other things.

A. Based on all I know about him, I do not feel like he did understand them.

(ST) Page 581 Lines 5-8

Q. I believe you've already stated that the entire time you've known Mr. Wilson you've never seen him go into a complete remission of his illness?

A. That's correct, yes.

(ST) Page 589 Lines 3-24

A. Yes, sir. In my observation, when Mr. Wilson was -- well, as has been stated previously by Dr. Ogborn -- Mr. Wilson never has been in what I would consider to be a state of complete and total remission from his mental illness. However, he has had periods when he was reasonably integrated. At such times as he has been what I would call reasonably integrated, he has been very cautious. I think he actually at times tended to malinger, without realizing that actually, basically, he has a mental disorder. At such times as he has become more disturbed, he has become far more open in his conversations with me. He would bring up things that he would not ordinarily discuss. In groups, he would confront patients in a manner in which he would not ordinarily confront them.

He has confessed to not taking his medication,essentially cheating it. Under

ordinary conditions, I mean,when he's in a good state of remission, he would never talk about these things. He was much more guarded than that.

This leaves me the conclusion that -- in fact, I'm of the opinion that at the time that he made his confessions he somehow or other felt, in his disturbed thinking, in his disturbed way, that he was not going to be held responsible in the strictest sense, for what he had done.

(ST) Page 629 Lines 4-10

Q. It is reasonable to state that as a result of his mental infirmity, or disease, or defect, that he may have been suffering from at the times that he confessed, that as a result of his mental illness, the mental infirmity, he was compelled to confess? Is that what you're saying?

A. I think it's a real possibility. This is what I strongly suspect did happen.

(ST) Page 635 Lines 12-25

Q. Doctor, when you initially examined Mr. Wilson, that was in August of '75, correct?

A. About then, yes, August or September.

Q. Some month or more right after the confessions, right?

A. About a couple of months.

Q. And your opinion of Mr. Wilson at that time was that he was competent to stand trial, but that it might be difficult to control his actions?

A. No. I think, more accurately, my opinion was that he was capable of understanding the charges, but that he was not capable of conducting himself reasonably throughout a trial. He was so bizarre, I didn't think he could work with his lawyer.

(ST) Page 641 Lines 2-9

BY MR. BUONAURO:

Q. Dr. Wilder, mention was made of

the Miranda Warnings. I know you're aware of what the Miranda Warnings are. It is your opinion that as a result of his mental infirmities, disease, or defect, that he was compelled to talk about his involvement, as a result of his illness. Does it make any difference whether or not he understood his Miranda Rights, in arriving at that opinion? Do you understand my question?

(ST) Page 641 Lines 16-25

Now getting back to your question. The degree to which he understood it probably would have had little to do with whether he talked or not. I think that it would have been similar to explaining to him that he didn't know how to fly as he was getting ready to take off for the Bermuda Triangle. Maybe he would have understood that he didn't know how to fly, but I think he still would have taken off.

Q. So you equate that to his con-

fessions, that maybe he did understand his Miranda Warnings, but it didn't make any difference, because he was compelled to talk about his

(ST) Page 642 Lines 1-8

involvement as a result of his illness?

A. I think this is probably what it is. None of us can look back into his mind, except by these indirect means. But that's probably what happened.

Q. That would be within reasonable medical certainty?

A. Well, I think within reasonable medical certainty there's a great doubt as to whether he could have done anything other than he did.

(ST) Page 429 Lines 20-25

BY MR. BUONAURO:

Q. All right. Dr. Guttman, based on your examination of Mr. Wilson, do you have an opinion as to his mental competency at the time he confessed, and the specific periods of time I'm talking about are July 4th and July 8th?

A. I had available, when I saw him on August the

(ST) Page 430 Lines 1-6

1st, 1978, medical reports from Chattahoochee and confessions, and, after discussing the case with him and the events of his life leading up to his arrest and the events subsequent to his arrest, it is my conclusion that he was legally insane at the time he gave confessions and did participate on the orange groves, looking for weapons.

(ST) Page 455 Lines 19-25

Q. Can you relate to the Court what transpired in that interview?

A. I went over to the Orange County Jail and asked to see him. When he brought him out, and the first meeting I had with the young man was very, very short and very brief, because he just couldn't communicate at all. I couldn't get through to him at all. I don't think he even

(ST) Page 456 Lines 1-2

understand I was a lawyer. And so I left and came back later.

(ST) Page 457 lines 19-25

Q. Regarding the airplane incident, this is the airplane he stole on June 3rd I guess you're referring to?

A. Something in, I think Ocala. He was suppose to have stolen an airplane.

Q. Did he tell you that he was stealing an airplane to solve the riddle of the

Bermuda Triangle? Do you recollect that?

(ST) Page 458 Lines 1-12

A. No, I don't recall anything about the Bermuda Triangle. But I asked him if he could fly and he said no. I said, Well, they tell me that you got caught trying to steal a plane. I said, Whatever possessed you to do that? And then, when he was brought in, Well, you don't understand that there are people out there, powers out there, directing me to do things. And I know that he did, one time, mention something about this man's wife being a witch in the conversation.

Q. Based upon these interviews with Mr. Wilson, then, is that when you arrived at the opinion to file a motion to have a competency hearing?

(ST) Page 459 Lines 19-23

A. I don't recall that he. I will tell you, Mr. Buonauro, he was "out there" quote,

so badly during the period of time that I visited with him, I just couldn't, there was no way the man could have stood trial or communicated with a lawyer or anybody else.

Florida Statute 394.467

Involuntary hospitalization

(1) Criteria. -A person may be involuntarily hospitalized if he is mentally ill and likely to injure himself or others if not hospitalized.

(2) Admission to a treatment facility. -A Patient may be hospitalied in a treatment facility, after notice and hearing, upon recommendation of the administrator of a receiving facility where the patient has been admitted for examination or evaluation. The hearing may be waived in writing by the patient. The recommendation must be supported by the opinions of two physicians who have personally examined the patient within the preceeding five days that the criteria for involuntary hospitalization are met. Such recommendation shall be entered on a hospitalization certificate, which certificate shall authorize the receiving facility to retain the patient

pending transfer to a treatment facility or completion of a hearing. The certificate shall be filed with the judge in the county where the patient is located and shall serve as a petition for a hearing regarding involuntary hospitalization. The certificate shall also be filed with the division, and copies shall be served on the patient and his guardian or representatives, accompanied by:

(a) A written notice, in plain and simple language, that the patient or his guardian or representative may apply at any time for a hearing on the issue of the patient's need for hospitalization if he has previously waived such a hearing;

(b) A petition for such hearing, which requires only the signature of the patient or his guardian or representative for completion;

(c) A written notice that the petition may be filed with a court in the county

in which the patient is hospitalized at the time the certificate is executed or in the county of the patient's residence and the names and addresses of the judges of such courts, and

(d) A written notice that the patient or his guardian or representative may apply immediately to the judge to have an attorney appointed if the patient cannot afford one. The petition may be filed at any time within six months of the date of the certificate. If the hearing is waived, the hospitalization certificate shall serve as authorization for the patient to be transferred to a treatment facility and as authorization for the treatment facility to admit the patient. The treatment facility may retain a patient for a period not to exceed six months from the date of admission. If continued hospitalization is necessary at the end of that period, the administrator shall apply to the hearing examiner for an order

authorizing continued hospitalization.

(3) Procedure for hearing on hospitalization. -If the patient does not waive a hearing or if a patient or his guardian or representative files a petition for a hearing, after having waived it, the judge shall serve notice on the administrator of the facility in which the patient is hospitalized and shall hold the hearing within five days unless a continuance is granted. The patient,his guardian or representative, or the administrator may apply for a change of venue for the convenience of parties or witnesses or because of the condition of the patient. Venue may be ordered changed within the discretion of the judge. The patient and his guardian or representatives shall be informed of the right to counsel by the judge. If the patient cannot afford an attorney, the judge shall appoint one. One of the physicians who executed the hospitalization certificate shall be a witness.

If the judge concludes that the patient meets the criteria for involuntary hospitalization, the judge shall order the patient to be transferred to a treatment facility or, if he is at a treatment facility, that he be retained there. The judge may adjudicate a person incompetent pursuant to the provisions of this part at the hearing on hospitalization. The treatment facility may retain a patient admitted involuntarily for a period not to exceed six months. If further hospitalization is necessary at the end of that period, the administrator shall apply to the hearing examiner for an order authorizing continued hospitalization.

(4) Procedure for continued hospitalization; hearing examiner. -

(a) If continued hospitalization of a patient is necessary, the administrator shall, prior to the expiration of the

period during which the treatment facility is authorized to retain the patient, request an order authorizing continued hospitalization, accompanied by a statement from the patient's physician justifying the request. Notification of this request for retention shall be mailed to the patient and his guardian or representatives along with a completed petition, requiring only a signature, for a hearing regarding the continued hospitalization.

(b) If the petition for the hearing is not returned within fifteen days, the hearing examiner shall sign the order for continued hospitalization. The treatment facility shall be authorized to retain the patient for a period not to exceed one year. The same procedure shall be repeated prior to the expiration of each additional one year period the patient is retained.

(c) If the patient or his guardian

or representative returns the signed petition, the hearing examiner shall set a time and place for the hearing to be held within ten days of the time he receives the petition. A continuance may be granted at the discretion of the hearing examiner. The patient and his guardian or representative shall be informed of the right to counsel by the hearing examiner, and if the patient cannot afford an attorney one shall be appointed by the court in which involuntary hospitalization proceedings were initiated.

(d) If continued hospitalization is necessary for an individual admitted while serving a criminal sentence, but whose sentence is about to expire, or for an individual hospitalized while a minor, but who is about to reach the age of twenty-one, the administrator shall petition the hearing examiner for an order authorizing continued hospitalization.

(ST) Page 467 Lines 17-22

A. When you went down to see Mr. Wilson, did he know who you were?

A. Yes. He recognized me as his sister.

Q. Were you able to communicate?

A. Almost not at all. He was just not capable of understanding what I was trying to talk to him about.

(ST) Page 472 Lines 2-16

Q. Okay. Did you come to visit him, then, in July?

A. Yes, I did.

Q. Did you make any attempts or were you successful in getting him committed under the Baker Act.?

A. Yes. When I recognized that he was still just as illogical and incoherent, I enlisted the help of Reverend Jim Brye and who is the chaplain for the Orange County Jail. And he, together with Mr.

Byrd, had Gary transferred to the hospital under the Baker Act provisions.

Q. You're talking about here locally in Orange County?

A. Yes, before.

Q. Before he was sent to Chattahoochee?

A. That's correct. He was transferred initially to a hospital for psychiatric evaluation.

(ST) Page 475 Lines 3-18

Q. Okay. And did he subsequently lose that job?

A. Yes.

Q. And what did he do after he lost that job?

A. Absolutely nothing. He became very withdrawn as far as any correspondence with even Nils and I in the house. His main form of correspondence was actually with out cat at that time or so he claimed that he carried on conversations with the cat and the cat overseeing him, making threats to him, and this sort of thing.

Q. Did, what did Mr. Wilson do, then, just sleep and eat there for the remainder of the time?

A. Right. He actually stayed in his room for about the last month, with the exception of the last week, and very confined and wouldn't even eat at regular hours. And he would come out and get sort of like

a mouse comes out to eat.

(ST) Page 476 Lines 14-19

A. Well, it came to our attention that Gary could not make any conclusive decisions on even when to eat or sleep or what to do, to get up, to not get up, and this sort of thing.

Q. You had to more or less tell him what to do to react?

(ST) Page 476 Line 24

A. Pretty much so.

(ST) Page 664 Lines 1-18

A. Yes, sir, it would be my opinion if I were forced to express it, if it were appropriate or pertinent that he was legally sane on July 4, and July 8.

Q. All right, now, I believe it's already been established that August of '75, you determined that at the time you interviewed Mr. Wilson -- you were asked to interview Mr. Wilson by the Court to see if he was competent to stand trial, correct?

A. That's right, true.

Q. In August of '75, you found that Mr. Wilson was, in your opinion, legally insane, is that correct?

A. That is true.

Q. I believe you have already stated that August, '75, you found Mr. Wilson so out of contact with reality. That's basically how you had termed it?

A. Yes, sir.

Q. You termed Mr. Wilson's illness as

paranoid schizophrenia?

A. Yes, sir.

(ST) Page 655 Lines 3-8

A. If I could describe without going into verbatim reports, in August when I saw Mr. Wilson he was just totally out of it. He was not able to adhere to any subject that might be brought up for discussion. He made references to many supernatural things. He felt great powers of influence going on about him.

(ST) Page 667 Lines 9-25

Question, why are you saying you were afraid of Dale Bass. Answer, , it has to deal with the conditions in which I met him. I was at Delaware at a party, and I felt his wife was a witch. And she kidnapped me from my old lady because I was living and had a happy relationship with my old lady. And after meeting them and going to their house and partying with them one night Paul ... I just was never the same after that.

Now, does that indicate rational thought process or does that give you, does that indicate that there is something wrong with this individual?

A. At the time that I was responding to the questions in general for Mr. Combs I replied that in those transcripts, with one exception, were free of disorganized or delusional thoughts. This is the very paragraph, if you will, that I was referring

to as the exception. I note other information about that. Yes, I feel that that thinking is more than borderline schizophrenic.

(ST) Page Lines 20-25

Q. Would it be fair to state in your opinion that up until July 4 of '75, in your opinion, he was paranoia schizophrenia, on some occasions?

A. On some occasions, yes, sir.

Q. Not all the time?

A. That would be my opinion.

(ST) Page 674 Lines 1-8

Q. And then would it be fair to state that as of July 8, after July 8th, 1975, that he was paranoid schizophrenia on some occasions, not all the time?

A. Yes, sir, and maybe in continuance.

Q. Then from August of '75, up until you examined him again this year, June 1st, '78, in your opinion he was legally insane?

A. Yes, sir.

(TT) Page 191 Lines 20-25

Q. Dr. Williams, on April -- this time in April, did you diagnose him as a particular -- to have a particular mental illness or defect or disorder?

A. Yes. I flet that all the symptoms he was evidencing to me were consistent with the diagnosis according to the standard nomenclature of being a schizophrenic reaction paranoid

(TT) Page 192 Lines 1

in type, schizophrenic reaction paranoid.

(TT) Page 193 Lines 7-15

Q. Doctor, at that time, April of '75, were you able to come to an opinion as to Mr. Wilson's legal -- as to whether he was legally insane or not?

A. I felt that he -- his conversation and the facts that he was giving me would indicate that he had great difficulty in the exercising of correct judgment. And

that this would make him a candidate for a label of not legally sane, not consciously capable of acting upon proper reality interpretation.

(TT) Page 198 Lines 8-13

Q. Doctor, were you able to come to an opinion regarding his legal insanity at the time he made these statements on July 4th and July 8, 1975, these recordings that you've heard and the jury heard?

A. Well, I felt that this individual still is suffering from what we would term -- have to term as schizophrenia.

(TT) Page 199 Lines 10-18

Q. Okay. Were you able to arrive to an opinion regarding legal insanity at the time of these confessions? Could he distinguish from right from wrong at that time?

A. I think that he still confused to the point where he could not. I could not rely -- in other words, my opinion is that I could not rely upon his statements as being truthful, and that he did not really understand what it was all about, therefore it would be consistent to say he did

understand right from wrong.